

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

JUNE 2, 1999

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The Public Meeting convened in Room 220 South
at 441 4th Street, N.W., Washington, D.C. 20001, pursuant to
notice at 9:30 a.m., Sheila Cross Reid, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
BETTY KING	Vice Chair
JERRY GILREATH	Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD	Commissioner
JOHN F. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

John Nyarku, Office of Zoning
Paul Hart, Office of Zoning
Beverly Bailey, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.

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1 P-R-O-C-E-E-D-I-N-G-S

2 (10:07 a.m.)

3 CHAIRPERSON REID: Good morning. We'll now
4 begin our June 2nd Public Hearing. Please pardon the delay
5 this morning. After our meeting we'll then go into the --
6 just the public meeting.

7 MR. HART: Good morning, Madam Chair, members
8 of the Board. For this public meeting, June 2nd, we have for
9 your consideration, public hearing minutes of June 21st, 1999.

10 VICE CHAIRPERSON KING: I didn't receive any
11 minutes.

12 MEMBER GILREATH: Nor did I.

13 CHAIRPERSON REID: I have the --

14 VICE CHAIRPERSON KING: I didn't receive any.
15 They weren't sent to me.

16 MEMBER GILREATH: Oh, I don't know the cases.
17 I didn't receive any minutes either. All I got was these.

18 CHAIRPERSON REID: I received the minutes.
19 Since the other Board members have not then we just --

20 VICE CHAIRPERSON KING: If you can provide them
21 to me during lunchtime I'll read them and we can vote on them
22 this afternoon. I didn't receive them in my packet.

23 CHAIRPERSON REID: Okay.

24 MR. HART: The first case to be decided this
25 morning is Case No. 16457, Application of Kass MA, L.L.C.,
26 pursuant to 11 DCMR 3108.1 for special exceptions under

1 Subsections 410 and 2516 to allow the construction of 33 new
2 single-family detached dwellings with garages in a theoretical
3 lot subdivision and 176 luxury garden apartments in the R-5-A
4 and R-5-B Districts at premises bounded by Good Hope Road,
5 S.E., between 24th Street, S.E. to the East and 18th Street,
6 S.E. to the West (Square 5735, Parcels 211/96, 220/31 and Lot
7 804 and Square 5763, Parcels 219/38).

8 CHAIRPERSON REID: Mr. Hart, do we have a proxy
9 for Mr. Hood?

10 MR. HART: Yes, we have a proxy for Mr. Hood.

11 VICE CHAIRPERSON KING: Was he present?

12 CHAIRPERSON REID: Yes, but it -- that's a
13 mistake.

14 VICE CHAIRPERSON KING: Madam Chair, I somewhat
15 reluctantly move that we approve this application. It is
16 troublesome. I think that the provision of quality housing in
17 that part of the city is a laudable goal.

18 I'm very concerned about the National Park
19 Service concerns and I think that we should make certain when
20 we write the Order that they're -- that the agreement that was
21 entered into between the Park Service and the developer must
22 be incorporated.

23 CHAIRPERSON REID: Ms. King, I disagree with
24 that motion. I think that -- you made the motion, right, so -
25 -

26 VICE CHAIRPERSON KING: I did make a motion.

1 CHAIRPERSON REID: -- let's let that be first.

2 Is there a second?

3 MEMBER GILREATH: I second the motion, that I
4 feel the, as I understand it, the applicants met with the Park
5 Service and the Parks have indicated certain ameliorations and
6 mitigations and so forth, and I feel that if those are adhered
7 to that it will be adequate protection, and I think that area
8 will benefit from quality housing over there. And that
9 Anacostia has been bypassed and to my mind this is a step in
10 the right direction and certainly is compatible with the
11 intent of zoning for the area.

12 VICE CHAIRPERSON KING: If I could just add one
13 thing to my motion, if Mr. Gilreath agrees. The ANC-8-B has
14 asked that the developers covenant that they will be the
15 managers of this project for a minimum of 25 years. And if
16 that is somehow enforceable and doable I think we should put
17 that in as a condition.

18 MEMBER GILREATH: I concur with that.

19 CHAIRPERSON REID: I think that I would not be
20 in agreement with this motion because I feel that the
21 community came up very strongly opposed to this type of
22 development, yet Ward 8 certainly does need revitalization.
23 We all know that and would like to see that.

24 However, what I have a problem with is the
25 caliber of the development. They do not want rental housing.
26 They want single-family development, single-family homes which

1 is needed there to try to of course, attract higher income
2 purchasers and to stabilize that community.

3 And the issues that they raised in regard to
4 there being just a glut of vacant apartments as it were,
5 there, that lends itself to illicit behavior within the
6 community, that as well as the impact of the traffic, the
7 parking -- and particularly I was very much impressed with the
8 testimony by the representative from the National Park
9 Service, Department of Interior, who raised grave concerns
10 about the environmental issues with regard to the water
11 runoff, flora and fauna, the vista of the Circle Park Ridge.

12 They seemed to be very opposed to this type
13 development, and then they later softened their position with
14 a letter with some mitigations that they had proffered to the
15 developer and they had agreed to do that.

16 Given the history of that area in regard to
17 some of the other, what was touted to be luxury apartments
18 that later ended up being a big disappointment to the area, I
19 think that whatever we do we should try to move in such a way
20 that we can better ensure that the people who live there, the
21 people who live in that community, can be protected and that
22 they can expect a higher caliber of living than what has been
23 imposed upon them in the past.

24 So that's my position. We'll take the vote
25 unless you have other -- do you have more?

26 VICE CHAIRPERSON KING: I disagree with you but

1 rather than arguing let's take a vote.

2 MR. HART: Madam Chair, before you proceed, let
3 me make a correction here. Mr. Hood submitted a proxy for
4 another case and he was not involved in this case. He did sit
5 on it but he said he would be here this morning -- he couldn't
6 make it this morning. This is after I had reported to you.

7 So since there is no proxy for this case from
8 him, no vote, but there's another case in which he did have a
9 proxy.

10 CHAIRPERSON REID: Wait a minute. He sat on
11 this case but he didn't submit the proxy same as he did the
12 other one?

13 MR. HART: No, he said he would be able to make
14 it --

15 CHAIRPERSON REID: Oh, he thought he would be
16 here?

17 MR. HART: He thought he would be here this
18 morning, would be able to make it this morning, and as such he
19 would not submit a proxy.

20 CHAIRPERSON REID: Okay, well --

21 MR. HART: He knew all that.

22 VICE CHAIRPERSON KING: Is he going to be here
23 later?

24 MR. HART: He will not for the --

25 VICE CHAIRPERSON KING: But you're saying we've
26 got a proxy for another case, so he must not be coming at all.

1 MR. HART: No, there is -- in the meeting
2 session that we had this morning, the case we're dealing with
3 now, he said he was reluctant to submit a proxy for that case
4 and he would not be here to do anything about it. However,
5 the other case he was very confident with that because he --
6 he said he was very comfortable with that and he submitted a
7 proxy for that case. Now, ask me he's going to be here today,
8 yes. But that's for later for the hearing session.

9 MEMBER GILREATH: Madam Chair, can we hold this
10 in abeyance, the vote, until later when he appears?

11 VICE CHAIRPERSON KING: You say he's coming
12 this morning?

13 MR. HART: On this, no.

14 VICE CHAIRPERSON KING: He's coming this
15 afternoon, okay. That's fine. Let's vote on it this
16 afternoon.

17 MS. BAILEY: Madam Chair, I just wanted to ask.
18 The people in the audience who are here specifically who would
19 be interested in the decision of that case, can we get an
20 approximate time when they would be -- is it after one or two
21 so if they leave they'll know when to come back?

22 MR. HART: The afternoon hearing starts at one,
23 and that is when I think he would be here, his arrival.

24 CHAIRPERSON REID: We'll take it up as the
25 first matter on the afternoon session, so anyone who's here
26 for that particular case then be here at one o'clock.

1 MR. HART: The second case, 16454, application
2 of Richard Tynes, Jr., pursuant to 11 DCMR 3108.1, for a
3 special exception under Section 802 to continue use of a
4 recycling processing facility in a C-M-1 District at premises
5 6130 North Capitol Street, N.W. (Parcels 135/237 and 135/238
6 near Square 3374).

7 VICE CHAIRPERSON KING: Madam Chair, I move
8 that we approve this application for a period of 15 years or
9 until the present ownership shall change; whichever comes
10 first.

11 CHAIRPERSON REID: I would agree. However, we
12 have a proxy from Mr. Hood and he recommended ten years as a
13 compromise between the 15 that the applicant was asking for
14 and the five years that ANC --

15 VICE CHAIRPERSON KING: I amend my motion.

16 CHAIRPERSON REID: Ten years?

17 VICE CHAIRPERSON KING: Ten years -- the same
18 conditions as in the present order under which they're
19 operating and for a period of ten years or until the facility
20 changes ownership, whichever shall come first.

21 CHAIRPERSON REID: Okay, and I will second that
22 motion, as well as the fact that we had requested and have now
23 received a letter from ANC-4-B, who comes out in strong
24 support of the application. However, they don't seem to have
25 had a quorum or to have voted. It's just a letter of support.

26 MEMBER GILREATH: We heard the presentation. I

1 heard nothing to indicate that the applicant's performance in
2 operating that was really negative. They've done an excellent
3 job and so I really support this as well.

4 CHAIRPERSON REID: All in favor?

5 (Chorus of ayes.)

6 Opposed?

7 (No response.)

8 MR. HART: The third case of the morning,
9 application number 16433.

10 CHAIRPERSON REID: You need to record the vote
11 don't you, Mr. Hart?

12 MR. HART: Staff will record the vote as three
13 to zero to grant --

14 VICE CHAIRPERSON KING: Four.

15 MR. HART: Four to zero to grant. Mrs. King,
16 Ms. Reid, Mr. Gilreath, and Mr. Hood by proxy.

17 CHAIRPERSON REID: In favor of; in favor of the
18 motion.

19 MR. HART: In favor of the motion; to grant,
20 yes.

21 The next case: Application number 16433, of
22 the Protestant Episcopal Cathedral Foundation of the District
23 of Columbia, pursuant to 11 DCMR 3108.1, for a special
24 exception under Section 205 for the construction of an
25 athletic facility with below-grade parking and to establish
26 two surface athletic fields to an existing private school

1 located in an R-1-B District at premises 3500 Woodley Road,
2 N.W. (Square 1944, Lot 25).

3 VICE CHAIRPERSON KING: Madam Chair, I suggest
4 we wait until Mr. Parsons arrives. He's currently on his way.

5 CHAIRPERSON REID: I would agree with that.
6 Mr. Hart, we'll table this one until Mr. Parsons arrives since
7 he is --

8 VICE CHAIRPERSON KING: And we'll need to table
9 the next one, too, because I didn't hear it. You and Jerry
10 and John.

11 CHAIRPERSON REID: Oh, okay. All right. The
12 16446, the number D on the Agenda should also be tabled until
13 Mr. Parsons arrives since Mrs. King was not present at the
14 time that we had this particular case.

15 MR. HART: The next case is Appeal 16404 of the
16 Capitol Hill Restoration Society, pursuant to 11 DCMR 3105,
17 from the decision of Gladys Hicks, Acting Zoning
18 Administrator, to issue Certificate of Occupancy Permit No.
19 98-0271 for a Home Occupation in a CAP/R-4 District at
20 premises 434 New Jersey Avenue, S.E. (Square 694, Lot 811).

21 VICE CHAIRPERSON KING: Madam Chair, I move
22 that we deny this appeal. There are distinct problems with
23 the application as it was presented to the applicant by DCRA.
24 It seems to presuppose that he is already the owner and the
25 occupant of the premises, although his agent testified that --
26 she made it clear that he was only a contract buyer at that

1 time.

2 Whether or not he was entitled to a Home
3 Occupancy Permit as a contract buyer is a very gray issue.
4 The fact is however, that he is now the owner/occupant
5 operating a home business out of his home at that address, and
6 that we should deny this appeal since he is not entitled to as
7 a matter of right, to that Home Occupancy Permit.

8 The question as to whether or not Mr. Fields is
9 in fact, living there most of the time, which is the benchmark
10 for whether or not it is his principal residence, is an
11 enforcement issue. And if DCRA finds on evidence that he is
12 not living there most of the time, then the permit can be
13 revoked.

14 But he has, as a matter of right as an
15 owner/occupant, if he testifies that he is spending most of
16 his time there he is entitled to have a Home Occupancy Permit.

17 MEMBER GILREATH: I concur with that. I'm
18 wondering if somehow for future cases like this, that there
19 can be some kind of clarification. I don't know whether it
20 would be that the Zoning Administrator could research this.
21 We need a determination whether or not you have to be a home
22 occupier; you have to occupy the premises before you can
23 apply.

24 And because the uncertainty it brings to this,
25 I think we should -- I concur we should deny the appeal. But
26 I think that there should be some kind of clarification for

1 future cases similar to this.

2 VICE CHAIRPERSON KING: Or certainly that the
3 application does not at any point say, are you now the
4 owner/occupant of the premises for which you are applying for
5 a permit and if you're not, don't bother to apply.

6 That is a very gray area and I would recommend
7 to DCRA that they clarify that and perhaps work with the
8 Office of the Corporation Counsel to figure out how they can
9 clarify their form and determine whether or not it is possible
10 for someone to verify their ability to have a Home Occupancy
11 Permit prior to actually concluding the purchase of a property
12 in the District of Columbia.

13 But the fact is that I think that as of today
14 Mr. Field, if he is spending most of his time in the District
15 of Columbia, is entitled to a Home Occupancy Permit.

16 CHAIRPERSON REID: I would agree with you both.
17 I think that the application is ambiguous and it's difficult
18 to ascertain what its ultimate intent is. The assumption in
19 my opinion, is that you are either living in or you own the
20 property -- you are either living in it as the owner or you
21 are the tenant. It is not -- it's very (unintelligible) as to
22 the status of a contract purchaser.

23 However I also feel that there was -- the way
24 the application was filled out -- it was not properly filled
25 out because there are questions about the current address of
26 Mr. Fields as well as his home telephone number, and the issue

1 as to whether his -- the owner or renter or other is not
2 circled.

3 And given the fact that it seems to be many
4 inconsistencies, in all fairness to Mr. Fields, give him the
5 benefit of the doubt and deny the appeal. And also given the
6 fact that the -- notwithstanding what was the situation at
7 the time that the application was filed, that is now the
8 remedy and we know that he is now in actually the residence
9 there at the property.

10 And because the regulations are solid as to a
11 definition of primary residence, then it's left to our
12 discretion to determine if in fact, we are convinced that he
13 is using the facility as his principal residence.

14 And again, I would not want to hold the
15 application up because we're not sure of that. It seems that
16 it's a very gray area. And I'd also feel comfortable with the
17 fact that if in fact, it is ascertained that he is not -- that
18 is not his principal residence, then DCRA would have to step
19 in as an enforcement entity in that regard.

20 So with that in mind, is there a second?

21 MEMBER GILREATH: I second.

22 CHAIRPERSON REID: There's a second to the
23 motion. All in favor?

24 (Chorus of ayes.)

25 Opposed?

26 MR. HART: The staff would record the vote as

1 three to zero: Mrs. King, Mr. Gilreath, Mrs. Reid, to deny.

2 VICE CHAIRPERSON KING: Did Mr. Clarens give
3 you a proxy for this?

4 MR. HART: No, he did not.

5 CHAIRPERSON REID: Okay, next?

6 MR. HART: Next is a motion. Case 16027 from
7 the Adas Israel Hebrew Congregation, pursuant to 11 DCMR
8 3108.1, for a special exception under Section 206 to increase
9 an existing private school from 38 to 185 children and 10 to
10 25 staff on the second floor in an R-5-A District at premises
11 2850 Quebec Street, N.W. (Square 2225, Lot 11).

12 The Adas Israel Hebrew Congregation is hereby
13 requesting the Board of Zoning Adjustment to extend the use of
14 the Summary Order on this application so that they can
15 continue the use for the duration of the school's academic
16 period. The school intends to relocate from the site entirely
17 no later than June of the year 2000.

18 Since this is such a short period of time the
19 applicant would like to remain there until the final move.
20 However, the Order expiration date of the existing Order is
21 for February 17, the year 2000.

22 VICE CHAIRPERSON KING: Madam Chair, this seems
23 to be a very non-controversial, very sensible solution to
24 their problem and I move that we grant the -- what are we
25 granting, the --

26 CHAIRPERSON REID: Extension.

1 VICE CHAIRPERSON KING: -- the extension to
2 June of the year 2000.

3 MEMBER GILREATH: I second the motion. I
4 concur with that. I think it would be unreasonable for us to
5 deny that, so I'm fully in support of this.

6 CHAIRPERSON REID: I agree. I see no reasons
7 to take an adverse position. All in favor?

8 (Chorus of ayes.)

9 Opposed?

10 (No response.)

11 MR. HART: The staff will report the vote as
12 three to zero, Mrs. King, Mr. Gilreath, Mrs. Reid, to grant
13 the extension requested by this motion.

14 The second motion, 16273, a motion for a
15 modification of approved plans to allow for a one-story
16 addition to the southern side of the existing two-story
17 carriage house on the Lab School campus. The Lab School
18 requires a waiver from Subsection 3335.3 of the Zoning
19 Regulations which states that a request for modification of
20 plans must be filed within six months of the date of the final
21 order.

22 Approving the original application BZA Order
23 No. 16273 was issued by the Board on February 24, 1998.
24 Therefore, the 6-month period has expired in Application No.
25 16273 of the Lab School of Washington and George and Georgette
26 Amouri, pursuant to 11 DCMR 3108.1, for a special exception

1 under Section 206 to allow an addition to an existing private
2 school and an increase in the maximum enrollment from 250
3 students to 310 students in an R-1-B District at premises 4759
4 Reservoir Road, N.W. (Square 1372; Lots 19, 20, and 24).

5 VICE CHAIRPERSON KING: Madam Chair, I find
6 that this is not a modification of approved plans. There was
7 no mention of the carriage house in any of the hearings or our
8 Order early-on. I'm sympathetic to the Lab School's desire to
9 add this facility in the most economical way possible.

10 And I would move that we deny the motion but
11 that if they reapply for a special exception expeditiously --
12 basically with all of the information that they've already
13 given us but that they reapply in the proper form -- and it
14 needs to be advertised for 40 days, therefore probably the
15 earliest we could take it up would be our second meeting in
16 July, which is what date, Paul? Does it work out if they --

17 MR. HART: The 7th of July.

18 VICE CHAIRPERSON KING: Is the first one, so
19 the second one would be the 21st of July.

20 MR. HART: The 21st, yes. The first meeting in
21 July will be the 7th, the --

22 VICE CHAIRPERSON KING: Second would be the
23 21st?

24 MR. HART: Yes, that's a hearing date.

25 VICE CHAIRPERSON KING: Yes, I understand that,
26 but this is for a hearing.

1 MR. HART: Okay, the 21st.

2 VICE CHAIRPERSON KING: This is not a meeting.
3 It would be reapplication.

4 MR. HART: The 21st.

5 VICE CHAIRPERSON KING: Publication for 40 days
6 and then we would try and schedule it for the 21st of July.
7 And if there's not a lot of opposition to it, as there was not
8 a lot of opposition to the original plans, why we could
9 perhaps give them a bench decision. I understand that they're
10 building this summer and so forth, but I don't see that this,
11 Madam Chair, is a modification of approved plans; it's a new
12 plan.

13 CHAIRPERSON REID: Exactly. If you go to what
14 the modification consists of, and I don't think one would
15 think that would be a small or negligible addition to the
16 existing plans. But in this instance, because it is a one-
17 story addition, then you have to go to adverse impact, be held
18 at neighboring communities so therefore the special exception
19 I think would be to correct the request in this particular
20 case.

21 MEMBER GILREATH: Ms. King, is that a formal
22 motion that she --

23 VICE CHAIRPERSON KING: That was a motion to
24 deny the motion.

25 MEMBER GILREATH: I second the motion and I
26 think it's basically a procedural matter here. I think when

1 it comes back in, at least from what I've seen, I don't think
2 we'll have any problems. But I think that it's reasonable
3 that they comply with proper procedure. So I second the
4 motion.

5 CHAIRPERSON REID: All in favor?

6 (Chorus of ayes.)

7 Opposed?

8 (No response.)

9 MR. HART: The staff would record the vote as
10 three to zero to deny the motion: Mrs. King, Mr. Gilreath,
11 and Mrs. Reid.

12 The next case under Other Matters is
13 Application No. 15875 of George Basiliko, pursuant to 11 DCMR
14 3107.2 and 3108.1, for a variance from the off-street parking
15 requirements (Subsection 2101.1) or, in the alternative, a
16 special exception under Section 2108 to reduce the number of
17 parking spaces required for non-residential uses to allow a
18 public hall -- 300 seats on the first floor in a C-M-2
19 District at premises 1350 Okie Street, N.E. (Square 4038,
20 Parcel 142/103).

21 The Order in this case is an Order denying the
22 waiver of the 10-day filing requirement for a Motion for
23 Rehearing. The proposed Order was sent out for exceptions;
24 the exceptions were due in March. No exceptions were filed.

25 VICE CHAIRPERSON KING: Do we have to take some
26 action on this now?

1 CHAIRPERSON REID: No, that's basically for our
2 information. And we note that we have seen it and that we've
3 acknowledged it, and that's about all we have to do in that
4 regard. Is that right, Mr. Hart?

5 MR. HART: That's right.

6 VICE CHAIRPERSON KING: Madam Chair, could I
7 ask that we withdraw for an executive session to discuss the
8 cases that Mr. --

9 CHAIRPERSON REID: I think we can do that in
10 the form of a motion, Mrs. King.

11 VICE CHAIRPERSON KING: Okay, I move that we
12 withdraw to executive session.

13 MEMBER GILREATH: I second the motion.

14 CHAIRPERSON REID: All in favor?

15 (Chorus of ayes.)

16 CHAIRPERSON REID: Mr. Parsons, there's a
17 motion on the floor that we withdraw to an executive session
18 to discuss the National Cathedral case.

19 COMMISSIONER PARSONS: Aye.

20 CHAIRPERSON REID: All opposed?

21 (No response.)

22 Okay. We are going to go into executive
23 session and we will come out and then make a determination on
24 the record as to the position of the Board in regard to the
25 National Cathedral case.

26 (Whereupon, the foregoing matter went off the

1 record at 10:37 a.m. and went back on the record at 11:17
2 a.m.)

3 CHAIRPERSON REID: In regard to the National
4 Cathedral case.

5 VICE-CHAIRPERSON KING: I have a motion, Madam
6 Chair. It is my opinion that the Protestant Episcopal
7 Cathedral Foundation has met their burden of proof and I move
8 that we grant this application; and that, as conditions, we
9 attach to our order the most recent resolution of the Advisory
10 Neighborhood Commission and the most recent agreement between
11 the Foundation and the Cleveland Park Citizens Association.

12 CHAIRPERSON REID: Second?

13 COMMISSIONER PARSONS: Second.

14 MEMBER GILREATH: I'd like to make a comment
15 that I commend all of the parties involved and certainly the
16 National Cathedral Foundation. This facility, part of it
17 could have been put above ground and would've impacted the
18 foes and I think by working with the citizens -- and the
19 citizens made a very important input I think, of citizens
20 litigation and I take satisfaction, to my mind, seeing the
21 democratic process working effectively.

22 The Cathedral gets, to me, a legitimate much
23 needed athletic facility and the citizens receive reasonable
24 protection for their properties nearby and so forth. So I
25 fully support it.

26 CHAIRPERSON REID: Thank you.

1 Mr. Parsons.

2 COMMISSIONER PARSONS: I would like to
3 associate myself with Mr. Gilreath's remarks and it's an
4 extraordinary case and a very difficult project. I think the
5 school has gone to extraordinary ends to mitigate the impacts
6 of the facility and more importantly, I guess, is how they
7 have mitigated the impacts of its usage.

8 In their agreement, the agreements that they've
9 struck, which I think was potentially obnoxious quality of the
10 facility was the after hours use and that has been restricted
11 to the point that I think the community should be comforted
12 with the lesser impact on them.

13 CHAIRPERSON REID: I too, feel that this was a
14 very difficult case and that, given the fact that in the best
15 of worlds you have opposing interests, but the impression that
16 I got from this particular community which was very impressive
17 to me was that, notwithstanding the fact that there were
18 problems and that there were differences of opinion, they had
19 the desire to try to work together to try to mitigate as much
20 as possible some of the adverse impact.

21 And even with the testimony -- in my
22 experience, you see sometimes in these kinds of contested
23 cases a lot of acrimonious testimony. In this instance I saw
24 none. I saw where the community loved the community where
25 they lived, the neighborhood, and the National Cathedral did
26 all that they could to try to reach out to them and to listen

1 to what their concerns were and to work with them and to
2 mitigate, where possible, the adverse impact that they had
3 acknowledged themselves that was evident within this case.

4 So therefore, I commend the community and the
5 National Cathedral for the immense effort that they put forth
6 in getting to some type of resolution of the issues in the
7 case and to bring to us an agreement that we could work with
8 and that we could utilize to try to -- in granting approval of
9 this case, granting also, some -- giving some comfort to the
10 community through the aspects of the conditions to mitigate
11 much of the adverse impact.

12 All in favor?

13 (Chorus of ayes.)

14 CHAIRPERSON REID: Opposed?

15 (No response.)

16 MR. HART: Madam Chair, who seconded? Who was
17 the second?

18 VICE CHAIRPERSON KING: Mr. Parsons.

19 MR. HART: Okay. Staff will report the vote as
20 four-to-zero to grant with conditions: Mrs. King, Mr.
21 Parsons, Mr. Gilreath and Miss Reid.

22 The next case, Application No. 16446 of DRM and
23 Associates, Inc., pursuant to 11 DCMR 3108.1 and 3107.2, for a
24 special exception under Section 205 to allow a child
25 development center for 50 children, infant through 12 years
26 and 9 staff, and a variance from the off-street parking

1 requirements (Subsection 2101.1) in an R-4 District at
2 premises 728 F Street, N.E. (Square 981, Lot 49).

3 VICE CHAIRPERSON KING: I can't participate in
4 this because I was not here.

5 CHAIRPERSON REID: What's the number?

6 MR. HART: It's 16446. It has here that the
7 status was granted from the bench. The bench agreed to give
8 an opinion today pending certain requirements, which was a
9 proposed Order which the applicant had the option of giving us
10 a new Order or going with the Order that was with this case.
11 He chose to submit a new Order.

12 CHAIRPERSON REID: Okay.

13 COMMISSIONER PARSONS: That is before us marked
14 "Received 4/16/99"?

15 MR. HART: That's correct, yes. And the
16 package should have a copy of the old Order.

17 CHAIRPERSON REID: I would recommend approval
18 of this application. I feel that the applicant has met his
19 burden of proof under Section 206 of the regulations. This
20 would also include approval with the following conditions.

21 Now, the conditions that were in the original
22 Order and the positions that are proffered in his proposed
23 Order are greatly curtailed. And when I looked at it, it
24 appears to me that the reason was that many of the items that
25 had been outlined in the original order had already been
26 accomplished.

1 For example, the providing of a solid or
2 baffled wood fence around the deck area, and the trash
3 coverage, and the community liaison program. The assumption
4 is that these things have already been done so that they don't
5 have to be reiterated in the second Order, or the extension
6 Order.

7 Is that correct, Mr. Hart?

8 MR. HART: I hear your assumption, Madam Chair,
9 but it would seem to me that some of the conditions in the
10 first Order are ongoing conditions and it should be repeated
11 in the second Order to make sure -- to keep them honest,
12 really.

13 CHAIRPERSON REID: Oh, okay.

14 MR. HART: Like where it says the liaison
15 situation, the trash situation.

16 CHAIRPERSON REID: All right, then. I have no
17 problem with including within this particular Order the same
18 conditions that were in the first Order for the purposes of
19 continuity, I suppose. I don't have to read the variance
20 conditions, do I?

21 MR. HART: No, you don't.

22 CHAIRPERSON REID: Okay. And they basically
23 remain the same except for the amount of time. I think he
24 asked for five years, Mr. Hart?

25 MR. HART: Yes, I think he asked for five.

26 CHAIRPERSON REID: I have no problem with

1 granting him the five years for the term. So he asked for 15
2 years.

3 MEMBER GILREATH: Yes, that might be a little
4 much; 15 years.

5 CHAIRPERSON REID: I can go along with ten.
6 What do you think --

7 MEMBER GILREATH: Does he have a good track
8 record for these first five years?

9 CHAIRPERSON REID: There was some opposition --
10 I think it was the single member District of the ANC that came
11 forward, that they -- if I'm not mistaken -- they were
12 satisfied with his mitigating impact through the conditions.

13 MEMBER GILREATH: Well, assuming a reasonable
14 track record I concede ten years. I could live with that.

15 MR. HART: Madam Chair, the neighbors or
16 community problem that he had you recall, was dealing with a
17 parking lot that was allegedly 12 blocks away -- what he was
18 doing there -- and they're trying to use that in this case and
19 the Board indicated that that was irrelevant in this case.

20 CHAIRPERSON REID: Was irrelevant?

21 MR. HART: Yes, to what he's asking here.

22 CHAIRPERSON REID: Right. Mr. Parsons?

23 COMMISSIONER PARSONS: Well, that was my
24 recollection. The predominance of the testimony had to do
25 with something that wasn't taken care of in another community.
26 I agree with you that 15 years is excessive and if the

1 practice of the Board -- and I'm not too familiar with it --
2 in this case is ten years then that seems reasonable.

3 CHAIRPERSON REID: Okay, all in favor?
4 (Chorus of ayes.)
5 Opposed?
6 (No response.)

7 COMMISSIONER PARSONS: I don't think you really
8 had a motion and a second.

9 MR. HART: Yes, we didn't.

10 CHAIRPERSON REID: I move that we approve the
11 Order.

12 COMMISSIONER PARSONS: Yes, I don't think
13 anybody seconded it. So Mr. Gilreath --

14 MEMBER GILREATH: I second the motion.

15 CHAIRPERSON REID: Okay, thanks.

16 MR. HART: The staff will record the vote as
17 three to zero to grant with conditions: Mrs. Reid, Mr.
18 Gilreath, Mr. Parsons.

19 CHAIRPERSON REID: We have just one more and
20 that's the -- did we do --

21 VICE CHAIRPERSON KING: I have read the bench
22 minutes and I'm ready to vote on those.

23 CHAIRPERSON REID: Okay, and Mr. Gilreath has
24 to leave us. All right, and then --

25 VICE CHAIRPERSON KING: We did everything
26 except KASS --

1 MR. HART: Mr. Hood is coming early for that.

2 CHAIRPERSON REID: Number 16027?

3 MR. HART: That's the Adas Hebrew Congregation,

4 as you --

5 CHAIRPERSON REID: We extended the Summary

6 Order. Okay.

7 VICE CHAIRPERSON KING: I move the minutes on

8 block for --

9 CHAIRPERSON REID: Wait. Mr. Gilreath, have

10 you read it? Mr. Gilreath has not had a --

11 MEMBER GILREATH: Are these the minutes here?

12 CHAIRPERSON REID: Yes. Why don't we just give

13 him a couple of minutes so we can just close this out.

14 MEMBER GILREATH: Okay, I'm ready to go.

15 VICE CHAIRPERSON KING: Madam Chair, I move the

16 bench minutes on block for April 21st, May 5th, and May 26th.

17 MEMBER GILREATH: I second it. Do you want to

18 talk --

19 CHAIRPERSON REID: Yes, I had a question in

20 regard to the sui sponte aspects of the minutes for April

21 21st, with regard to the case for 16426, and I wanted to find

22 out where were we on this particular process?

23 VICE CHAIRPERSON KING: I would argue that -- I

24 mean, it's a fact that Angel said that, and I would move that

25 we vote on the minutes and then inquire as to the present

26 status of whether or not he has tried to impose his minority

1 opinion on the three of us.

2 CHAIRPERSON REID: Well, be that as it may, I'd
3 like to get a response.

4 MR. HART: Mr. Clarens has filed this sui
5 sponte to the Zoning Commission where he's requesting or has
6 requested, a reversal of the Board's decision. This was done
7 within the indicated necessary ten days as the date of the
8 decision. He made it in under that deadline and it is now in
9 the hands of the Zoning Commission.

10 What I cannot answer is if there is a specific
11 time now on the Zoning Commission for them to respond. I
12 would think so because you're dealing with an applicant's
13 Order. I cannot respond to how the Zoning Commission --

14 CHAIRPERSON REID: Does Mr. Parsons know?

15 MR. HART: Mr. Parsons might know.

16 CHAIRPERSON REID: In the interest of sui
17 sponte review by the Zoning Commission, what is the timeframe
18 for that to take place?

19 COMMISSIONER PARSONS: Having only occurred
20 once in the last -- how many years?

21 VICE CHAIRPERSON KING: Fifty or 60, John?

22 COMMISSIONER PARSONS: In 1977 is when I joined
23 this panel. I can recall only one sui sponte review, and that
24 at --

25 VICE CHAIRPERSON KING: Well, Angel has filed
26 one against the three of us and we were just curious as to

1 what happens now.

2 CHAIRPERSON REID: Yes, ten days to file; he
3 did that. And then it goes to the Zoning Commission.

4 COMMISSIONER PARSONS: Now, that was before the
5 Zoning Commission at its last meeting and I had to leave
6 early. And I think it was -- as I recall, what they did is to
7 -- it was for our information at that meeting. And I presume
8 then, it will come before us for the next meeting -- but I'm
9 not sure of that -- for a decision as to what to do.

10 But to say --

11 MR. HART: In that case then the next step for
12 me as BZA is to talk to the Zoning Commission staff and find
13 out what happened. I wasn't aware that the Board had taken it
14 up yet -- the Zoning Commission had taken it up yet. I knew
15 it was submitted to them but I didn't know it had come up on
16 the agenda already.

17 COMMISSIONER PARSONS: It came up on the agenda
18 as information; that is, something that had been submitted.
19 And I'm fairly certain when I left that they were not going to
20 deal with it that day.

21 MR. BERGSTEIN: I have a regulation here. It's
22 Section 3103. It says that no decision or Order -- which
23 would be the written final Order under the rules -- shall take
24 effect until ten days after having become final pursuant to
25 (unintelligible) those procedures final written Order. Within
26 a 10-day period the Zoning Commission may, sui sponte,

1 determine to review any Order or decision of the Board.

2 And then there's the process that's laid out.

3 So there appears to be a 10-day period from the written Order.

4 Has there been a written Order?

5 MR. HART: The 10-day period that Mr. Clarens
6 quoted was from the date of the decision. An Order has not
7 been written. He was aware of ten days but he indicated to me
8 that it was from the time of the decision and not the date of
9 the Order.

10 CHAIRPERSON REID: In all fairness to the
11 applicant, I think we need to try to bring some closure into
12 this particular case. What is it correct? Is it ten days
13 after the Order and the Order has not been written yet?

14 MR. BERGSTEIN: I'm sorry Madam Chairperson.
15 An order of the BZA be final upon service to the parties.

16 CHAIRPERSON REID: And then ten days after that
17 service is when --

18 MR. BERGSTEIN: Yes.

19 CHAIRPERSON REID: See now it's been done in
20 the inverse because Mr. Parsons said it's already been put on
21 the agenda for the Zoning Commission. An Order hasn't been
22 written.

23 MR. BERGSTEIN: Well, that may be something
24 that needs to be considered elsewhere, in terms of whether or
25 not that's appropriate under the rules. And I won't say it is
26 or isn't at this point.

1 CHAIRPERSON REID: All right, well --

2 MR. BERGSTEIN: It may at most, be premature.

3 CHAIRPERSON REID: Okay, well then we'll find
4 out what in fact, the procedure is.

5 COMMISSIONER PARSONS: To look for precedent as
6 to how long it takes, it's just not there.

7 MR. BERGSTEIN: Just for clarification, Section
8 331.6 says, "For the purpose of this chapter a decision or
9 Order of the Board is final upon filing in the record and
10 service upon the parties". And that's what's referred back to
11 in 3301.3. Ten days after having become final; within that
12 10-day period the Zoning Commission has sui sponte determined
13 to review any Order.

14 CHAIRPERSON REID: When you review --

15 VICE CHAIRPERSON KING: In the meantime --

16 CHAIRPERSON REID: -- activities -- if I may --

17 MR. BERGSTEIN: No, and in essence it sounds --

18 CHAIRPERSON REID: When you review -- if I may.
19 When you review, is that then based on any of the record?

20 COMMISSIONER PARSONS: It can be done that way
21 or a hearing can be conducted, as I recall.

22 CHAIRPERSON REID: If you have a hearing are we
23 supposed to be present there?

24 MR. BERGSTEIN: The whole process is laid out
25 and perhaps maybe -- you may wish to review this section and I
26 think it would elucidate what your issues are -- if you want

1 to discuss them now.

2 CHAIRPERSON REID: Okay.

3 MEMBER GILREATH: I have no problem here

4 (inaudible) legitimate (inaudible). But we took the best

5 information we had and made the best judgment we could make,

6 and I'd be glad to tell the Zoning Commission that.

7 COMMISSIONER PARSONS: You look forward to such

8 testimony.

9 MEMBER GILREATH: If I have too. I don't look

10 forward to it but I'm prepared to go with --

11 VICE CHAIRPERSON KING: Give them hell, Jerry.

12 CHAIRPERSON REID: Do we vote? Did we put in

13 to vote?

14 VICE CHAIRPERSON KING: Nobody even seconded my

15 motion.

16 MEMBER GILREATH: I second the motion.

17 CHAIRPERSON REID: All in favor?

18 (Chorus of ayes.)

19 Opposed?

20 (No response.)

21 Now we will adjourn the meeting for -- the June

22 2nd meeting for our BZA.

23 MR. HART: The staff will record the vote three

24 to zero to accept the minutes: Mrs. King, Mr. Gilreath, and

25 Ms. Reid.

26 (Whereupon, the foregoing matter went off the

1 record at 11:40 a.m. and went back on the record at 1:13 p.m.)

2 CHAIRPERSON REID: We will continue the
3 morning's meeting and then we'll go into the afternoon
4 session.

5 In regard to the case number 16457, Kass MA, we
6 had some discussion earlier about this particular development.
7 And we had a motion -- did you second the motion?

8 MEMBER GILREATH: Yes, I did.

9 VICE CHAIRPERSON KING: I withdraw my motion.

10 CHAIRPERSON REID: We now have the motion
11 withdrawn so we can start over again. I'd like to move that
12 we not approve this application. I feel that the
13 environmental impact testimony and mission by the National
14 Park Service, Department of Interior, that spoke to the
15 adverse impact environmentally of this particular development
16 on the surrounding community and related to the run-off, the
17 drainage, the destruction of the flora and fauna there, as
18 well as the vista being compromised.

19 In addition, the opposition of Fairline
20 Neighborhood Association has submitted to us their testimony
21 and for their written submission that the development would
22 not be completely without adverse impact into the community as
23 far as the traffic, parking, as well as the quality of life;
24 and that they did not feel that this type of development would
25 be suitable for what the community is desirous of -- that is,
26 single-family housing.

1 For that reason, I would like to move that we
2 not approve the application.

3 COMMISSIONER HOOD: Madam Chair, with that I
4 will second that with the fact that the comprehensive plan
5 insists upon single-family dwellings within that area. And I
6 would also add that the comprehensive plan is a plan, and the
7 people who live in that area who are most affected, also have
8 input into that plan.

9 And I think due to that nature -- and I hate to
10 vote against that because of a single-family piece which I
11 thought was excellent -- but I think one of the concerns that
12 I know that I had was the density of apartments which, you
13 know, quite a few apartments in that area and the density of
14 the complexes would be an adverse impact.

15 So with that, I will second the motion.

16 CHAIRPERSON REID: Mr. Gilreath?

17 MEMBER GILREATH: Well, I'm going to be against
18 this, though. I feel that in any kind of community that is
19 vital and economically viable and so forth, you have to have a
20 mixture of incomes and so forth; people of different
21 backgrounds. And I think this development has the potential
22 of bringing in a little bit of a different economic level
23 there, and these people within the community can work up to
24 that and occupy those.

25 And for a section of the city that needs
26 economic help and so forth, in my judgment I think it's a

1 mistake to turn this down. And as such, I will be voting
2 against the motion.

3 CHAIRPERSON REID: Ms. King?

4 VICE CHAIRPERSON KING: Well, my gravest
5 concern is adverse impact on the National Park Service land.
6 And Mr. Hood, I think the issue is difficult on the single-
7 family because the single-family houses are in Ward 6 where
8 the comprehensive plan does call for them to be.

9 But it is a very intense use of the land when
10 you come to the part where there are 176 units of multi-family
11 dwelling. I find this a very troubling case, frankly. And I
12 probably will -- I'm torn between voting to deny and voting to
13 abstain. But let's continue the discussion if there are any
14 other points that anyone wishes to make.

15 MEMBER GILREATH: I can elaborate on the
16 impacts on the Stanton Park; that other development has
17 occurred along Rock Creek Park and other parklands, and to my
18 mind, as long as reasonable and appropriate mitigation can be
19 accomplished, there's nothing inappropriate about allowing
20 certain types of development adjacent to parkland.

21 So to me, that would not be a basis for --

22 VICE CHAIRPERSON KING: Well, the people from
23 the National Park Service seem to be deeply concerned about
24 the wetlands, and I don't think it's an analogous situation at
25 Rock Creek Park because the development that occurs on the
26 fringes of Rock Creek Park is so much elevated above the creek

1 that I don't know that it's analogous.

2 MEMBER GILREATH: Well as I understand it,
3 there's some kind of major fill over it. It's going to come
4 from Metro or whatever its origin is. Apparently it is not
5 receptive to growing plants and so forth and so to simply not
6 allow anything there, you're still going to get some adverse
7 impact. You can always argue, we'll leave the rest of it
8 which grows effectively; fine, let this continue.

9 But my understanding is in this agreement with
10 the Park Service, or at least the recommendation, that they
11 would take measures to try to correct this fill area and the
12 lack of the fertility of that particular portion, so there
13 would be some improvement there.

14 CHAIRPERSON REID: Also, I think that the ANC
15 representative has sent a letter and also testified to their
16 position, and that was that they wanted to have single-family
17 housing because what they feared, the adverse impact would be
18 ultimately in allowing development of this nature and that at
19 this time they did not feel that going forward with additional
20 rental housing would be suitable or in their best interest
21 because of the fact that there were several blocks of boarded-
22 up rental housing there already, and that had contributed to
23 blight and to illicit activities within the area. That was a
24 grave concern.

25 MEMBER GILREATH: Well, this boarded-up rental
26 housing though, are those gated communities? If they're

1 comparable it seems to me it's a logical argument, but if this
2 is a unique kind of development over there where it's gated
3 and controlled, to me that suggests there could be some
4 evidence it could succeed, rather than say it's doomed to
5 failure.

6 CHAIRPERSON REID: No, it's -- and I think that
7 the idea of the gated community was well taken and I think
8 that was good. However, it's still a sidewall development,
9 it's very dense, and it's rental housing rather than single-
10 family detached homes; so single-family even, townhouses. And
11 that's what the problem here to be.

12 And with regard to the gated aspect of it,
13 there has been experience of that nature before, that does not
14 necessarily solve the solution to the problems in that
15 community.

16 MEMBER GILREATH: Well, if Anacostia can
17 somehow have a policy in saying, any future residential
18 development has to be single-family houses, wouldn't that
19 effectively limit a major portion of the population? They
20 say, we cannot afford a single-family home but we can afford a
21 nice apartment?

22 CHAIRPERSON REID: I don't think that that's
23 the issue. I think that the issue is that again, there's a
24 considerable amount, significant amount of apartments there
25 now that are boarded up, and that what they were saying is
26 that they would like to see those houses be revitalized or

1 renovated; brought back into the market, rather than build
2 more rental houses -- a glut apparently in their opinion -- a
3 glut of rental properties there.

4 MEMBER GILREATH: Well, and you think turning
5 this down is going to encourage the refurbishing of these
6 buildings and what-have-you? If we turn this down is this
7 going to have a positive effect? Are there going to be more
8 single-family houses and so forth over there? If we turn it
9 down what's going to be the positive effect on the community?

10 CHAIRPERSON REID: Well, I can't speak to what
11 --

12 COMMISSIONER HOOD: I think we're getting into
13 speculation.

14 CHAIRPERSON REID: Yes.

15 COMMISSIONER HOOD: I mean, I think we need to
16 stick with the regulations and then climb for the special
17 session and we just need to move forward.

18 MEMBER GILREATH: Okay, well I, you know, I
19 said what I think about it and I will vote against the motion.

20 CHAIRPERSON REID: Okay. All in favor, aye?

21 (Chorus of ayes.)

22 All opposed?

23 MEMBER GILREATH: No.

24 MR. HART: The staff will record the vote as
25 three to one to deny: Mrs. Reid, Mr. Hood, Ms. King to deny;
26 Mr. Gilreath against the motion to deny.

1 CHAIRPERSON REID: This is the end of the June
2 2nd meeting and we'll now go into the afternoon hearing.
3 (Whereupon, the public meeting was concluded at
4 1:25 p.m.)
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